

Exhibit No. 8
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Bill No. HB 597

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Sender: "Robynn Gabel" <rgabel@rmisp.com>[E-mail Source](#)**Subject:** House Bill 597**Date:** Sat, 3 Mar 2007 20:43:55 -0700**To:** "Dan Erving" <oldywedz@bresnan.net>

Concerning House Bill 597

I am the Director of the Rocky Mountain Regional Association of Theatre Owners, which covers the states of Idaho, Montana, Wyoming, Colorado, Utah, and New Mexico. This is a coalition of State Associations for Theatre Owners.

I keep track of legislation in those states that might adversely affect movie theatre owners and I have found that House Bill 597 is one of worry.

I would like you to know that I am all for protecting our children from material that would affect them adversely. I am mother to five and grandmother to 17. As a theatre owner I actively enforce our rating system set up by the MPAA. I believe that our system works because of it's high standards and our willingness to turn away business by enforcing the "R" rating. We as an industry have been willing since the advent of movies to police ourselves for the sake of the movie going public.

I am concerned that this bill is worded to loosely and easily open for misinterpretation. Recently in Riverton, Wyoming, which is a small town concerned about the problems a casino is bringing in, I worked with the city council on creating an ordinance to deter possible adult material coming in through strip clubs, adult book stores and adult movie houses. They were distinct and very concise in what they were trying to keep from coming in and the wording of that ordinance shows that.

The word "obscene" can vary from person to person. To one person it can mean graphic gore, to another nudity, to another foul language. To use this loose of language opens a Pandora's Box of interpretation and litigation. This in turn adversely affects businesses across the board and could become a nightmare snarl of court cases.

I would like to ask that this bill be scrutinized and re-worded to give it a direct meaning and purpose.

Thank you,
Robynn Gabel
Director
Rocky Mountain Regional NATO
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an hour the state minimum wage paid to restaurant servers and other tipped employees. These workers would have been made ineligible for future automatic cost-of-living raises provided in the voter-passed law.

Two Republicans, Reps. Carol Lambert of Broadus and Penny Morgan of Billings, joined 48 Democrats in voting against the bill. One Democrat, Rep. Robin Hamilton of Missoula, part owner of a restaurant, joined

limbo after a tied vote. The sponsor, Rep. Dennis Himmelberger, R-Billings, said he would try to pass it again in the coming days.

The bill, backed by the Montana Restaurant Association, was introduced after Montanans voted by a 73-37 percent margin last fall to raise the state's minimum wage to \$6.15 an hour from \$5.15. In addition, Congress is debating whether to raise the federal minimum wage to

a tip credit that allows restaurant owners to pay a tipped employee \$2.13 an hour and count some of the server's tips to make up the difference between the \$2.13 an hour and that state's minimum wage.

His bill would not drop the pay to \$2.13 an hour, but would freeze wages for tipped employees at \$6.15 an hour, plus their tips.

A Billings restaurant

nap. She calls unfair." "When I tomer and do a good leave a tip a reward job." The 65- told the H es deserve paid. "It's no

House votes to allow tougher local obscenity ordinances

HELENA (AP) — Cities and counties could enact tougher obscenity ordinances than state law under a bill the House endorsed Wednesday.

The measure by Rep. Ron Stoker, R-Darby, would give local governments that authority only when the ordinances apply to children. It was endorsed, 66-34, with a final vote scheduled Thursday.

Rep. Tom McGillyray, R-Billings, said tougher obscenity laws are needed, adding state law currently

allows a "loophole for perverts."

"If you want your children or your grandchildren to have perverts showing them pornography and obscenity in order to lower their inhibitions so that pervert can legally use them, abuse them and destroy them for life, then go ahead and vote 'no' on this bill," he said.

Rep. John Sinrud, R-Bozeman, said cities and counties can already enact stricter water and sewer laws than the state. He

argued the same guidelines should apply to obscenity.

Rep. Dave Gallik, D-Helena, worried the bill would create a patchwork of obscenity laws around the state.

"The ones who don't end up (passing stricter laws), what we possibly could be doing here is have red light districts popping up because there are going to be some areas that have these restrictions and some that don't," he said.

The bill is House Bill 597.

Energy: Would provide power for about 6,000 customers

continued from 5A

plans to finance two 10-megawatt wind-power projects — one near Molt, just west of Billings, and one south of Fort Peck. Doty has said that if all goes as planned, the projects could be up and running in two years.

The projects would provide enough power for about 6,000 residential customers, as well as dozens of jobs during the construction phases.

SB337 authorizes the co-

op to own and operate power-generating equipment, such as windmills, and to own power lines to transport its electricity to the system that serves utility customers in Montana.

Members of the co-op would buy the electricity generated by the windmills. The power would be transported to customers along lines owned by regular utilities, such as NorthWestern Energy and Montana-Dakota Utilities, which would charge consumers for the green power.

Doty has said the initial price will be higher than current rates from traditional utilities, but that the cost could decline or become less than traditional power in the future.

The projects also are part of a program authorized by Congress, gives bonding authority to local governments and co-ops to finance renewable or "green" energy projects. In Montana, two co-ops and dozens of local governments won authorization late last year.

Tax

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Whitfist tax, levi said, co neighbor Kalispe have th mills.

Opp: Whittin Taxpa said th

CommTech Services, Inc will be

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Memo in Opposition to Montana House Bill 597

House Bill 597 threatens the distribution of First Amendment-protected books, magazines, recordings, films, video games and videos in Montana. The members of Media Coalition represent most of the publishers, booksellers, librarians, film, recording, and video game manufacturers, and recording, video and video game retailers and film exhibitors in Montana and the rest of the United States. They have asked me to explain their concern.

H.B. 597 would allow local governments to enact ordinances restricting the sale or display of material obscene for minors that are broader than the existing state law. It would also allow municipalities to change the definitions of what is obscene for minors, possibly in violation of the Constitution.

The members of Media Coalition do not produce or sell obscene material, nor do they dispute the right of the states to ban the sale to minors of material obscene for minors. However, they do produce, sell and exhibit First Amendment-protected books, magazines, films, recordings, videos and video games with sexual content. They are concerned by any law that would hinder the sale or exhibition of legal works.

Governments may restrict minors' access to some sexually explicit speech but it is a narrow range of material determined by a specific test. In the case of *Ginsberg v. New York*, 390 U.S. 629 (1968), the U.S. Supreme Court established a three-part test for determining whether material is "harmful to minors" ("obscene for minors" in Montana) and may therefore be banned for sale, display or exhibit to minors. Governments may also restrict the display of such material but without restricting adults' access to such material. See, *Virginia v. American Booksellers Assn., Inc.*, 488 U.S. 905 (1988). The present Montana law restricting the dissemination of material "harmful to minors" closely follows these Supreme Court decisions. If local governments were to enact ordinances that are more restrictive than the state law, they would inevitably go beyond what is permitted by the definition in *Ginsberg* and *Virginia v. American Booksellers Assn., Inc.* In turn this would force bookstores, record stores, movie theaters and video stores to either limit First Amendment-protected material in their inventories or to bring legal action to protect their right to do business.

H.B. 597 would allow local governments to change the definition of community standards by which material is judged to be illegal for minors.

The Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, and librarians, recording, motion picture and video games producers, recording, video, and video game retailers, and motion picture exhibitors in the United States.

Present Montana law judges material on a statewide standard. H.B. 597 permits local governments to shrink the community to a local one. This would lead to chaos in the distribution of constitutionally protected works by permitting each county, town or smaller government division in which the materials are sold, rented or exhibited to define for itself which ones are "harmful to minors." Books, magazines, recordings, films and videos are delivered to wholesalers by national firms that would find it impossible, in any reasonable or economical way, to inquire into the standards of every community in which their works are distributed. The wholesaler, whose territory includes scores of communities, would face the same problem. If H.B. 597 becomes law, distributors and wholesalers will curtail the deliveries of material with sexual content, including non-obscene works, rather than risk mistaking local standards and distributing material that is later found to be obscene for minors.

The members of Media Coalition strongly urge you to defend the First Amendment rights of retailers and all the citizens of Montana and defeat this legislation.

45-8-205. Definitions. As used in 45-8-205 through 45-8-208, the following definitions apply:

(1) "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) its dominant theme appeals to a minor's prurient interest in sex;
(b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

(c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors.

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).

(3) "Minor" means a person under 18 years of age.

(4) "Newsstand" means a stand that distributes or sells newspapers or magazines.

(5) "Performance" means any motion picture, film, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed before an audience of one or more, with or without consideration.

(6) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(7) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

(8) "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality.

History: En. Sec. 1, Ch. 571, L. 1989.

Collateral References:

Regulation of exposure of female, but not male, breasts. 67 ALR 5th 431.

45-8-206. Public display or dissemination of obscene material to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) he had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

History: En. Sec. 2, Ch. 571, L. 1989.

Cross References:

Sexual abuse of children, 45-5-625.

Case Notes:

Obscenity "Community Standards" Statewide: Municipal corporation does not have power to enact ordinance relating to obscenity in excess of limits imposed on city ordinances by state Legislature, as constitutionally adequate community standard to establish whether a work is obscene is not local city standards as opposed to statewide standards, but statewide standards as opposed to national standards. Court held that in the face of Art. XI, sec. 6, Mont. Const. a city ordinance in conflict with a prohibitive section of state law cannot stand where the state law is constitutionally valid. *U.S. Mfg. & Distrib. Corp. v. Great Falls*, 169 M 298, 546 P2d 522, 33 St. Rep. 272 (1976).

Collateral References:

Obscenity key 2, 5, 7 through 9.
67 C.J.S. Obscenity §§ 3, 6.

45-8-207. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of 45-8-206, he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending.

History: En. Sec. 3, Ch. 571, L. 1989.

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The Entertainment Merchants Association (EMA) opposes House Bill 597, which would allow local governments to define what constitutes obscene material and material obscene as to minors in their communities and to place restrictions on such materials beyond that which is already established in state law.

While EMA recognizes the rights of communities to restrict movies, video games, music, books, magazines, and the like that are legally obscene or obscene as to minors, we are concerned that H.B. 597 would lead to the creation of a patchwork set of laws in Montana. Rather than being able to rely on a single statewide law with uniform standards, retailers would have to determine community-by-community whether the materials they offer can be legally sold and under what circumstances.

H.B. 597 would lead to great confusion at retail, where a DVD might be legal to sell or rent in one town, but not in another.

And because of the peculiar nuances of obscenity law, there is a danger that a local government could inadvertently adopt a standard that is constitutionally suspect, which would lead to costly and time-consuming litigation regarding the interpretation of the ordinance.

For these reasons, retailers prefer the predictability of statewide obscenity standards. EMA, therefore, respectfully suggests that the laws regarding obscenity and materials obscene as to minors be established on a statewide basis by the state legislature, with no option for varying local definitions and restrictions.

The Entertainment Merchants Association (EMA) was established in April 2006 through the merger of the Video Software Dealers Association (VSDA) and the Interactive Entertainment Merchants Association (IEMA). EMA is the not-for-profit international trade association dedicated to advancing the interests of the \$32 billion home entertainment industry. EMA represents more than 1,000 companies throughout the United States, Canada, and other nations. Its members operate more than

20,000 retail outlets in the U.S. that sell and/or rent DVDs and computer and console video games. Membership comprises the full spectrum of retailers (from single-store specialists to multi-line mass merchants), distributors, the home video divisions of major and independent motion picture studios, and other related businesses that constitute and support the home entertainment industry.

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Testimony to be given before the senate judiciary Committee of the State of Montana regarding HB 597

Senators:

My name is Philip Harris. I reside in Kalispell Montana, and I am the Managing Partner of Signature Theatres, which operates three movie theaters in Kalispell as well as a drive-in theatre in Columbia Falls. In July, we will be opening the largest single movie complex in the state when a new 14 screen movie theatre is completed, at a total cost in excess of \$12,000,000.

I apologize that I cannot testify before you in person today. I sincerely hope that my physical absence does not lessen in your minds the passion with which I make this plea to you. I am vehemently and unalterably opposed to the passage of HB 597, and hope that this Committee will see it for what it is, a misguided attempt by a few to impose unlawful censorship on Montana's citizens as a whole.

In the eight years that my company has operated movie theatres in the Flathead Valley, I have never received a single phone call, letter or e-mail, from a concerned citizen, complaining about the movies we have shown, the ratings information we have provided, or our enforcement of the voluntary ratings system adopted by the movie industry more than 30 years ago. This is despite the fact that our trade area contains approximately 14% of the entire population of the State of Montana.

Now, out of some misguided belief that it is the obligation of a few people in each town to dictate to all within the town what their standards of conduct and obscenity should be, we find ourselves faced with a bill that would set us back more than 50 years to a dark time when a few Censors tried to impose their moral values on the populace as a whole.

The passage of HB 597 will have disastrous and unintended consequences for the State. It will create redundant and conflicting layers of obscenity enforcement. It will create a patchwork of obscenity standards, different in communities only a few miles apart, but dictated to by the physical location of a theatre complex. It will result in wasteful and expensive litigation. It will encourage grandstanding and political posturing, all at the expense of the first amendment. And finally, it could cause major movie studios to refuse to distribute product to our communities because of uncertainties over conflicting laws and standards, in turn causing great economic hardship for movie theatre operators such as ourselves.

We, in the motion picture theatre industry have operated under the most successful voluntary ratings information and enforcement system in the world. Why should it be undermined by a few who believe it is their responsibility to take from adult citizens the right to make their own choice in the movies they and their children watch?

The concept of Individual freedom is the very backbone of this great state. It is important

that we not allow legislation to pass that undermines those freedoms and imposes the will of the few and the rights of the many.

Thank you. Philip Harris

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Dan: Lynn and I cannot be in Helena this week, although we really wanted to come to the hearing. My testimony is below. Lynn is planning to send a letter also. Thanks for all your work on this.

Mike Blakesley, Forsyth

=====

To whom it may concern:

I am writing in opposition to HB597. I am the owner of a single-screen movie theatre in Forsyth and I am concerned that this bill, if passed, could lead to dire consequences in my business and industry.

Montana needs laws that are consistent from county to county, and city to city. HB597 would open the possibility of differing "morality" laws in individual cities and towns. Not only would this be confusing, but it could lead to enormous legal expenses for small businesses, many of which are struggling to make ends meet already without new legal challenges to face.

If this bill is passed, my community could in turn decide to pass a more restrictive "anti-obscenity" ordinance. (For example, such a local law might deem "nudity" in movies to be obscene, thus putting us in violation of the law even when presenting movies containing otherwise-innocuous, tastefully-done scenes involving nudity.) This could lead to severe complications and legal expenses, and might also place undue restrictions on the types of entertainments that could be presented in a community. Similar problems could crop up in libraries, bookstores, music stores, and even cable TV and internet businesses.

There are plenty of places where we need the government to be involved in making things safe for all Montanans, but "morality" in entertainment is not such a place. The marketplace determines which types of entertainment it wants. The vast majority of entertainment in Montana is not obscene in any way, and passing a law that could create a tangled web of conflicting local ordinances would do nothing to improve the moral climate of our state.

Please do not pass this ill-conceived bill.

Sincerely,

Mike Blakesley
Roxy Theatre
Forsyth, MT

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